

1 Michael B. Lawler (SBN 50972)
2 Kasey C. Townsend (SBN 152992)
3 Anastasia K. Mazzella (SBN 245201)
MURCHISON & CUMMING, LLP
4 2010 Crow Canyon Place, Suite 380
5 San Ramon, California 94583
6 Telephone: (925) 365-3170
Facsimile: (925) 365-3180
E-Mail: ktownsend@murchisonlaw.com
mlawler@murchisonlaw.com
amazzella@murchisonlaw.com

7 Attorneys for Specially Appearing
8 Defendants, BYRIDER FRANCHISING,
9 INC. (erroneously sued and served as J.D.
Byrider, Inc.), Grace Auto, Inc. dba J.D.
Byrider (erroneously sued as JD Byrider
of Chandler), and Grace Finance, Inc. dba
CNAC (erroneously sued as CarNow
Acceptance Company)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

14 JESSICA HARTUNG, an individual,
15 Plaintiff,

16 |

VS.

17 J.D. BYRIDER, INC.; JD BYRIDER
18 OF CHANDLER; CARNOW
19 ACCEPTANCE COMPANY; JOHN
ANDERSON; and T-MOBILE USA,
INC. and DOES 1 through 10 inclusive,

20 | Defendants.

CASE NO. C 08-01380 SC

**STIPULATION TO DISMISS
GRACE AUTO, INC. AND TO
TRANSFER THIS ACTION TO
THE EASTERN DISTRICT OF THE
UNITED STATES DISTRICT
COURT OF CALIFORNIA AND
[PROPOSED] ORDER THEREON**

[Notice of Withdrawal of Motion to
Dismiss for Lack of Personal
Jurisdiction Filed Concurrently
Herewith]

Assigned to Hon. Samuel Conti

IT IS HEREBY STIPULATED by and between plaintiff JESSICA HARTUNG
(hereinafter "Plaintiff"), specially appearing defendants, BYRIDER FRANCHISING,
INC. (erroneously sued and served as J.D. Byrider, Inc.), GRACE AUTO, INC. dba
J.D. Byrider (erroneously sued as JD Byrider of Chandler), and GRACE FINANCE,
INC. dba CNAC (erroneously sued as CarNow Acceptance Company) (collectively,

1 "Specially-Appearing Defendants") , and defendant T-MOBILE USA, INC. ("T-
2 Mobile"), through their respective attorneys of record, as follows:

3 1. GRACE AUTO, INC. dba J.D. Byrider (erroneously sued as JD Byrider of
4 Chandler) has alleged it has insufficient minimum contacts with the State of California
5 for this Court to exercise personal jurisdiction. Accordingly, GRACE AUTO, INC. and
6 Plaintiff agree that GRACE AUTO, INC. shall be dismissed, without prejudice, from
7 the above-entitled action pursuant to Federal Rules of Civil Procedure 41(a);

8 2. Plaintiff and Specially Appearing Defendants agree that this action should
9 have been brought in the United States District Court of California, Eastern District,
10 Fresno Division (i.e., at the time this action was commenced Plaintiff resided in
11 Stanislaus County, California and a significant part of the alleged acts took place in said
12 county), and that such transfer would serve the convenience of the parties and
13 witnesses. All parties agree to transfer of this action to the Eastern District, Fresno
14 Division pursuant to 28 U.S.C. § 1404;

15 3. Plaintiff and Specially Appearing Defendants agree that the foregoing
16 stipulations effectively resolve the issues of personal jurisdiction and venue raised in
17 Specially Appearing Defendants' Motion to Dismiss for Lack of Personal Jurisdiction,
18 or in the alternative, Transfer Venue, which is currently set for hearing on July 25,
19 2008, and that this motion shall be taken off-calendar;

20 4. The parties agree that the issue of whether Plaintiff may be compelled to
21 arbitrate her claims has not been resolved and that BYRIDER FRANCHISING and
22 GRACE FINANCE are entitled to re-file or re-notice their Motion to Compel
23 Arbitration once this case has been transferred to a court in the Eastern District, Fresno
24 Division and that BYRIDER FRANCHISING and GRACE FINANCE's execution of
25 this Stipulation shall not constitute in any way a waiver of their right to bring a Motion
26 to Compel Arbitration and Stay Proceedings or be used as a basis for opposing any such
27 motion brought by said defendants;

28 ///

1 5. The parties agree that T-Mobile is entitled to respond to Plaintiff's
2 Complaint, in the event it does not reach settlement with Plaintiff, with a Motion to
3 Compel Arbitration and Stay Proceedings, and that T-Mobile's execution of this
4 Stipulation shall not constitute in any way a waiver of T-Mobile's right to bring a
5 Motion to Compel Arbitration and Stay Proceedings or be used as a basis for opposing
6 any such motion brought by T-Mobile;

7 6. Plaintiff and Specially Appearing Defendants agree that BYRIDER
8 FRANCHISING and GRACE FINANCE will file a Notice of Withdrawal of their
9 Motion to Dismiss pursuant to Local Rule 7-7(e).

IT IS SO STIPULATED.

11 | DATED: July 9, 2008

MURCHISON & CUMMING, LLP

By:

Michael B. Lawler
Kasey C. Townsend
Anastasia K. Mazzella
Attorneys for Specially Appearing
Defendants, BYRIDER FRANCHISING,
INC. (erroneously sued and served as J.D.
Byrider, Inc.), Grace Auto, Inc. dba J.D.
Byrider (erroneously sued as JD Byrider of
Chandler), and Grace Finance, Inc. dba
CNAC (erroneously sued as CarNow
Acceptance Company)

20 | DATED: July 7, 2008

LAW OFFICES OF ERIC F. FAGAN

By: s/Jeremy S. Golden

**Jeremy S. Golden
Attorneys for Plaintiff, JESSICA
HARTUNG**

11

26 //

27 | Page

1 DATED: July 8, 2008

PERKINS COIE LLP

2
3 By: s/Christopher M. Jhang

4 Jason A. Yurasek

5 Christopher M. Jhang

6 Attorneys for Defendant T-MOBILE USA,
7 INC.

ORDER OF THE COURT

8 The Court has received and considered the Stipulation to dismiss defendant
9 GRACE AUTO, INC. and transfer this case to the United States District Court of
10 California, Eastern District, Fresno Division. The Court has reviewed the Stipulation and
11 matter, and determined that there is good cause for the dismissal and transfer. Therefore,

12 **PURSUANT TO STIPULATION, IT IS HEREBY ORDERED** that:

13 1. GRACE AUTO, INC. is hereby dismissed from the above-entitled action,
14 without prejudice;

15 2. The matter is transferred to the United States District Court of California,
16 Eastern District, Fresno Division;

17 3. All scheduling orders in this matter are set aside and all scheduling and
18 other pretrial conferences that have been set are off calendar;

19 4. Specially Appearing Defendant's Motion to Dismiss, which is set for
20 hearing on July 25, 2008 at 10:00 a.m., is hereby off-calendar;

21 5. The defendants are entitled to assert issues of arbitration, which shall be
22 determined by the transferee court.

23
24 Dated: _____

25 Honorable Samuel Conti
26 United States District Judge

27 J:\AKMJD BYRIDER_Final\STIP & ORD-070708.akm

28

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 At the time of service, I was over 18 years of age and not a party to this action. I
4 am employed in the County of Los Angeles, State of California. My business address is
5 801 South Grand Avenue, 9th Floor, Los Angeles, California 90017-4613.

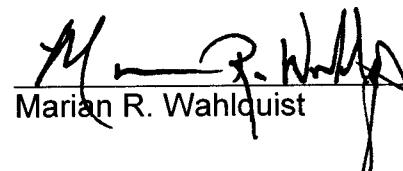
6 On July 9, 2008, I served true copies of the following document(s) described as
7 **STIPULATION TO DISMISS GRACE AUTO, INC. AND TO TRANSFER THIS ACTION
TO THE EASTERN DISTRICT OF THE UNITED STATES DISTRICT COURT OF
CALIFORNIA AND [PROPOSED] ORDER THEREON** on the interested parties in this
action as follows:

8 **SEE ATTACHED LIST**

9 **BY E-MAIL OR ELECTRONIC TRANSMISSION:** Based on a court order or an
10 agreement of the parties to accept service by e-mail or electronic transmission, I caused
11 the document(s) to be sent from e-mail address mwahlquist@murchisonlaw.com to the
persons at the e-mail addresses listed in the Service List. I did not receive, within a
reasonable time after the transmission, any electronic message or other indication that
the transmission was unsuccessful.

12 I declare under penalty of perjury under the laws of the United States of America
13 that the foregoing is true and correct and that I am employed in the office of a member of
the bar of this Court at whose direction the service was made.

14 Executed on July 9, 2008, at Los Angeles, California.

15
16 
17 Marian R. Wahldquist

18
19
20
21
22
23
24
25
26
27
28

SERVICE LIST

Jessica Hartung vs. JD Byrider, Inc., JD Byrider of Chandler, CarNow Acceptance Company, John Anderson and T-Mobile USA, et al,

Jeremy Scott Golden
Law Offices of Eric F. Fagan
2300 Boswell Road
Suite 211
Chula Vista, CA 91914
Telephone: 619-656-6656
Facsimile: 775-898-5471
E-mail: jeremy@efaganlaw.com

Attorneys for Plaintiff, Jessica Hartung

Eric F. Fagan
Law Offices of Eric F. Fagan
2220 Otay Lakes Road
Suite 502-84
Chula Vista, CA 91915
Telephone: 619-656-6656
Facsimile: 775-898-5471
E-mail: efagan@efaganlaw.com

Attorneys for Plaintiff, Jessica Hartung

Jason A. Yurasek
Perkins Coie LLP
Four Embarcadero Center
Suite 2400
San Francisco, CA 94111
Telephone: 415-344-7021
Facsimile: 415-344-7221
E-mail: jyurasek@perkinscoie.com

Attnorneys for Defendant, T-Mobile USA, Inc.